

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

TRAVIS BONDURANT

Plaintiff,

v.

PEOPLE OF THE STATE OF
CALIFORNIA, et al.

Defendants.

Case No.: 10cv1945 AJB (JMA)

**ORDER ADOPTING REPORT AND
RECOMMENDATION GRANTING
RESPONDENTS' MOTION TO
DISMISS WITH PREJUDICE; AND
DISMISSING PETITION FOR WRIT
OF HABEAS CORPUS**

[Doc. No. 28.]

On September 8, 2010, Petitioner Travis Bondurant, a prisoner proceeding *pro se* and *in forma pauperis*, filed a petition for writ of habeas corpus in the United States District Court for the Eastern District of California. (Dkt. No. 1) On September 15, 2010, the case was transferred to the Southern District of California. (Dkt. No. 2.) On September 22, 2010, the petition was dismissed without prejudice with leave to amend. (Dkt. No. 6.) On November 1, 2010, Petitioner filed a first amended petition for writ of habeas corpus. (Dkt. No. 12.) On February 2, 2011, Respondents filed a motion to dismiss the first amended petition as being time-barred. (Dkt. No. 28.) Petitioner filed an opposition on February 25, 2011. (Dkt. No. 35.) On March 29, 2011, Magistrate Judge Adler filed a report and recommendation recommending that the petition be dismissed with prejudice as being time-barred. (Dkt. No. 45.) On April 18, 2011, Petitioner filed an objection to the report and recommendation. (Dkt. No. 53.)

1 **A. Review of Report and Recommendation**

2 “The district court must make a *de novo* determination of those portions of the report . . . to
3 which objection is made,” and “may accept, reject, or modify, in whole or in part, the finding or
4 recommendations made by the magistrate.” 28 U.S.C. § 636(b)(1); see also Federal Rule of Civil
5 Procedure 72(b); United States v. Remsing, 874 F.2d 614, 617 (9th Cir. 1989). However, in the absence
6 of a timely objection, the Court need “only satisfy itself that there is no clear error on the face of the
7 record.” Fed. R. Civ. P. 72(b), Advisory Committee Notes (1983).

8 **B. Discussion**

9 The report and recommendation concluded that the petition for writ of habeas corpus was time-
10 barred by the one year statute of limitations. The court determined that statutory tolling could not revive
11 the limitations period that had already ended and that Petitioner had not shown that equitable tolling was
12 applicable. Although Petitioner filed an objection, he has not provided any legal argument or factual
13 support disputing the analysis in the report and recommendation. He only states that he was subject to
14 “duress, coercion, fraud, and undue influence to not file an appeal nor do my petitions timely.” These
15 arguments were already considered in the report and recommendation. Moreover, he has not presented
16 any supporting facts to support such an allegation. The report and recommendation discussed Peti-
17 tioner’s claim of being subject to duress, fraud, coercion and undue influence in determining whether
18 Petitioner is entitled to equitable tolling. The Court concluded that despite these allegations, Petitioner
19 was able to file four state court petitions for writ of habeas corpus, an appeal of his criminal conviction,
20 file a “coherent First Amended Petition and opposition to Respondent’s motion to dismiss within the
21 deadlines set by the Court.” (Dkt. 45 at 9.) The Magistrate Judge acknowledged Petitioner’s mental
22 diagnosis of schizophrenia, paranoid type; however, the court concluded that his condition was not of
23 such severity that Petitioner was unable to rationally or factually understand the need to timely file a
24 habeas petition. (*Id.*) After having reviewed the report and recommendation and the objections, the
25 Court concludes that the Magistrate Judge properly applied the law to this case and adopts the report and
26 recommendation in full.

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C. Certificate of Appealability

Rule 11 of the Federal Rules Governing Section 2254 Cases, “[t]he district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant.” A certificate of appealability should be issued only where the petition presents “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). A certificate of appealability “should issue when the prisoner shows . . . that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” Slack v. McDaniel, 529 U.S. 473, 484 (2000).


Based on the Court’s review of the petition, the Court finds no issues are debatable among jurists of reason and that no jurists of reason would find it debatable whether the district court was correct in its procedural ruling. See Slack, 529 U.S. at 484. Accordingly, a certificate of appealability is DENIED as to the claims in the petition.

Conclusion

After having reviewed the report and recommendation, and the objections, the Court ADOPTS the Report and Recommendation in its entirety and GRANTS Respondents’ motion to dismiss the petition for writ of habeas corpus with prejudice and DISMISSES the petition. The Court also DENIES a certificate of appealability.

IT IS SO ORDERED.

DATED: August 5, 2011


 Hon. Anthony J. Battaglia
 U.S. District Judge